

**From:** Melody Dingman  
**To:** Microsoft ATR  
**Date:** 1/23/02 7:20pm  
**Subject:** Microsoft Settlement

January 23, 2002

Judge Colleen Kollar-Kotelly  
United States District Court for the District of Columbia  
333 Constitution Avenue, NW  
Washington, DC 20001

RE: US v. Microsoft proposed final order

Dear Judge Kollar-Kotelly,

Introduction

I have read the proposed consent final judgment for USA versus Microsoft. As an American and a taxpayer, I am quite disturbed by the proposed settlement.

It would seem the US Department of Justice allowed Microsoft to place many provisions in the agreement that can be used to undermine the free software movement. Under J.1 and J.2 of the proposed final order, Microsoft Corporation can withhold important technical information from third parties simply based on the idea that Microsoft does not certify the "authenticity and viability of its business," yet it turns right around and describes the licensing system for Linux as a "cancer" that threatens the end of both the intellectual property rights system and the future of research and development. Wouldn't this licensing freedom simply allow R&D to flourish?

This proposed agreement provides Microsoft with a plethora of strategies to undermine the development of free software. Free Software depends on the free sharing of technical information with the general public, taking advantage of the collective intelligence of the users, who collaborate on improvements in the code. If Microsoft can strangle the access to technical information under a plan sanctioned by the court, and then use its monopolistic power over their clients to migrate users to proprietary Microsoft interfaces, it will stunt the development of any competitors. People would be locked in with Microsoft with no alternatives, as Microsoft continues to hike up its prices for its inefficient products. The movie industry is even known to joke about Microsoft products. A recent space film showed several astronauts gaining control of their

craft only after the entire system was "rebooted" due to unknown problems with the software! Consider what Eric Raymond said about the way Microsoft products operate:

"Millions of people think that it's right, it's normal to have an operating system so fragile that it hangs and crashes three or four times a week and has to be rebooted every time you change anything deeper than the wallpaper. (Expletive deleted), we knew how to do better than that in 1975!"

In the Halloween documents, published widely on the net, Microsoft executives sent internal memorandums to key personnel suggesting they "dig deeply" into their customers' computer networks and eliminate any applications of Linux or Unix they found there. I believe the proposed settlement does not address this issue.

Microsoft is also given a very short period wherein they would be required to monitor themselves. Five years is hardly a flash when you consider the case has been in court for at least eight years already. And even within the brief period of the term of the agreement, Microsoft has full license to influence the enforcement effort. Microsoft, despite the courts' decision that they were indeed operating illegally, is given the right to select one member of the three who would be on the Technical Committee> That person would then help in selecting the third member. The committee is sworn to secrecy, denying the American public any information on Microsoft's compliance with the agreement. They are even PAID by Microsoft, working inside Microsoft's headquarters. It has been suggested that the public won't know if this committee spends its time playing golf with Microsoft executives, or investigating Microsoft's anticompetitive activities. Its ability to interview Microsoft employees will be extremely limited by the provisions that give Microsoft the opportunity to insist on having its lawyers present. One would be hard pressed to imagine any enforcement that would do less to make Microsoft accountable for its actions in the past, which is probably why Microsoft accepted its terms.

In its 1984 agreement with the European Commission, IBM was required to affirmatively resolve compatibility issues raised by its competitors, and the EC staff had annual meetings with IBM to review its progress in resolve disputes. The EC reserved the right to revisit its enforcement action on IBM if it was not satisfied with IBM's conduct.

The court could require that the Department of Justice

itself or some truly independent parties appoint the members of the TC, and give the TC real investigative powers, take them off Microsoft's payroll and give them staff and the authority to inform the public of progress in resolving compliance problems. Include an annual report that could address complaints, as well as suggestions for modifications of the order that may be warranted by Microsoft's conduct. The TC could be given real enforcement powers, such as the power to levy fines on Microsoft. The level of fines that would serve as a deterrent for Microsoft would be difficult to fathom, since they have revenue of over one billion dollars a month! But one might make these fines more proactive by directing the money to be paid into trust funds that would fund the development of free software, an endeavor that Microsoft has indicated it strongly opposes as a threat to its own monopoly.

Completely missing from the proposed final order is anything that would make Microsoft pay for its past misdeeds, and this is an omission that must be remedied. Microsoft is not a first time offender, and has never shown remorse for its conduct. They simply repeatedly attack the motives and character of officers of the government and members of the judiciary to justify their means to the ends.

After its long history of evasion of antitrust enforcement and its extraordinarily anticompetitive practices recognized as illegal by the entire DC Circuit court, it is amazing they should be told to monitor themselves as discipline for not monitoring themselves! In one article I read recently, I noticed a settlement of one of the cases against Microsoft included allowing Microsoft to provide the schools across the country with free computers and software. Hmn. Tell a company with a monopoly they can insert their products into the last arena of their competitors. MacIntosh provides the government with computers for schools across the nation; I am sure Microsoft would love to displace them! Someone isn't thinking clearly in DC.

Please consider all the criticisms of the settlement proposal and please take the time to educate yourself about the ramifications of another weak disciplinary action against Microsoft. I believe the public wants more from its court system.

Thank you for your time.

Melody Dingman

